

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA

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OFFICE OF THE CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Hyrum S. Johnson,

Plaintiff,

Civil File No.: 05-1062 DSD/SRN

v.

Jury Demand

Union Pacific Railroad Company,
a Delaware Corporation,

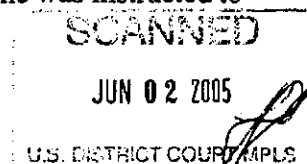
8:05CV313

COMPLAINT

Defendant.

Plaintiff, Hyrum S. Johnson, by his attorneys, Louis E. Jungbauer and Michael L. Weiner, Yaeger, Jungbauer, & Barczak, PLC ("Plaintiff"), for his cause of action against Defendant Union Pacific Railroad Company ("Union Pacific") states as follows:

1. At all times material, Plaintiff Hyrum S. Johnson was and is a resident of the City of North Platte, County of Lincoln, State of Nebraska;
2. At all times material, Defendant Union Pacific was and is a Delaware corporation, and was and is an interstate carrier, operating an interstate system of railroads in and through several states, including the District and Division wherein this case is filed;
3. Plaintiff was, at all times material, employed by the Defendant as a trainman and, as such, was engaged in work which closely and substantially touched upon and was in furtherance of Union Pacific's interstate commerce;
4. That the Court has jurisdiction over the Defendant pursuant to the Federal Employers' Liability Act (FELA), Title 45 U.S.C. §§ 51 et seq.;
5. On or about June 2, 2002, at approximately 2:00 a.m., Plaintiff was working in the course and scope of his employment as a trainman with Defendant when he was instructed to



go to a dark section of Bowl 34 of the Defendant's Bailey Yard, hook onto an Auto Rack and switch to Bowl 33; while he was doing so, he was struck by a freight car rolling down the adjacent track and knocked unconscious.

6. The June 2, 2002 injuries suffered by Plaintiff and the resulting damages were caused, in whole or in part, by the negligence of the Defendant and in violation of the FELA, to wit:

- a. Defendant negligently failed to provide a reasonably safe place to work;
- b. Defendant negligently failed to provide adequate overhead lighting of the area where the incident occurred;
- c. Defendant negligently failed to devise and/or implement an adequate safety program which may/could have avoided this accident;
- d. Defendant negligently created and permitted a dangerous and hazardous condition to exist on its premises where its employees were required to work;
- e. Defendant negligently failed to inspect and/or maintain the area of track where the incident occurred; and
- f. Other negligence.

7. As a result of Defendant's negligent violation of the FELA as set forth above, Plaintiff suffered severe and permanent injuries to his neck, head, shoulders, left knee and other parts of his body, emotional suffering, and loss of enjoyment of life;

8. As a further result of Defendant's negligent violation of the FELA as set forth above, Plaintiff has lost wages and will continue to lose wages in the future, and will sustain a permanent diminution of earning capacity;

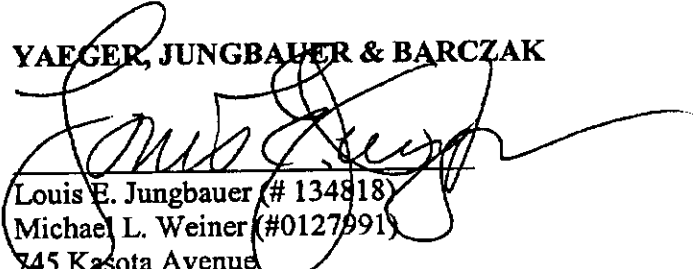
9. In an effort to heal and relieve his injuries, Plaintiff has spent and will continue to spend into the future monies for medical, nursing and related care;

WHEREFORE, Plaintiff asks this Court to enter judgment in his favor and against the Defendant railroad in an amount sufficient to fully compensate Plaintiff for damages and injuries to be proven at trial and for its costs and disbursements.

JURY TRIAL DEMANDED

6/2/05

YAEGER, JUNGBAUER & BARCZAK


Louis E. Jungbauer (# 134818)
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ATTORNEYS FOR PLAINTIFF

Case 0:05-cv-01062-DSD CIVIL COVER SHEET Filed 06/02/2005

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JS44 (Rev. 3/99)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE SEPARATE INSTRUCTION SHEET)

I. (a) PLAINTIFFS

HYRUM S. JOHNSON

(b) County of Residence of First Listed Plaintiff LINCOLN
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

UNION PACIFIC RAILROAD COMPANY

County of Residence of First Listed Defendant Delaware Corp.
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES,
LAND INVOLVED

(c) Attorneys (Firm Name, Address, and Telephone)

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Michael L. Weiner
YAEGER, JUNGBAUER, & BARCZAK
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Minneapolis, MN 55414
(612) 333-6371 - tel.
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Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only) (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Refer to Instruction sheet)

Please insert Nature of Suit Code 330Please insert Description Federal Employers Liability Act - Civil Tort

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

45 USC § 51 et seq - Plaintiff injured within scope and course of his employment for Defendant.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23DEMAND \$ In excess of court's jurisdictional limits.CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE

DOCKET NUMBER

DATE

6/2/05

June 2, 2004

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

SCANNED
JUN 02 2005
Louis E. Jungbauer (MN Bar No. 134818) and Michael L. Weiner (MN Bar No. 612991), Attorneys for Plaintiff
YAEGER, JUNGBAUER & BARCZAK, 745 Kasota Ave., Minneapolis, MN 55414; Tel. (612) 333-6371; Fax (612) 333-6319